

Senate Engrossed

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 112

SENATE BILL 1418

AN ACT

AMENDING SECTION 38-1101, ARIZONA REVISED STATUTES; RELATING TO LAW
ENFORCEMENT OFFICERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1101, Arizona Revised Statutes, is amended to
3 read:

4 38-1101. Law enforcement officers; right to representation;
5 right to evidence on appeal; change of hearing
6 officer or administrative law judge; definitions

7 A. If an employer interviews a law enforcement officer and the
8 employer reasonably believes that the interview could result in dismissal,
9 demotion or suspension, the law enforcement officer may request to have a
10 representative of the officer present at no cost to the employer during the
11 interview. The law enforcement officer shall select a representative who is
12 available on reasonable notice so that the interview is not unreasonably
13 delayed. The representative shall participate in the interview only as an
14 observer. Unless agreed to by the employer, the representative shall be from
15 the same agency and shall not be an attorney. The law enforcement officer
16 shall be permitted reasonable breaks of limited duration during any interview
17 for telephonic or in person consultation with others, including an attorney,
18 who are immediately available. AN EMPLOYER SHALL NOT DISCIPLINE, RETALIATE
19 AGAINST OR THREATEN TO RETALIATE AGAINST A LAW ENFORCEMENT OFFICER FOR
20 REQUESTING THAT A REPRESENTATIVE BE PRESENT OR FOR ACTING AS THE
21 REPRESENTATIVE OF A LAW ENFORCEMENT OFFICER PURSUANT TO THIS SUBSECTION.

22 B. Subsection A does not apply to an interview of a law enforcement
23 officer that is:

24 1. In the normal course of duty, counseling or instruction or an
25 informal verbal admonishment by, or other routine or unplanned contact with,
26 a supervisor or any other law enforcement officer.

27 2. Preliminary questioning to determine the scope of the allegations
28 or if an investigation is necessary.

29 3. Conducted in the course of a criminal investigation.

30 4. Conducted in the course of a polygraph examination.

31 C. In any appeal of a disciplinary action by a law enforcement
32 officer, the parties shall exchange copies of all relevant documents and a
33 list of all witnesses pursuant to the following time periods and
34 requirements:

35 1. Within three business days after the employer's receipt of a
36 written request from the law enforcement officer for a copy of the
37 investigative file that is accompanied by a copy of the filed notice of
38 appeal, the employer shall provide a complete copy of the investigative file
39 as well as the names and home or work mailing addresses of all persons
40 interviewed during the course of the investigation.

41 2. No later than five business days before the appeal hearing, OR, IF
42 THE APPEAL HEARING IS SCHEDULED MORE THAN TWENTY DAYS AFTER THE NOTICE OF
43 APPEAL, NO LATER THAN TEN BUSINESS DAYS BEFORE THE APPEAL HEARING, the
44 employer and the law enforcement officer shall exchange copies of any

1 documents that may be introduced at the hearing and that have not previously
2 been disclosed.

3 3. No later than five business days before the appeal hearing, OR, IF
4 THE APPEAL HEARING IS SCHEDULED MORE THAN TWENTY DAYS AFTER THE NOTICE OF
5 APPEAL, NO LATER THAN TEN BUSINESS DAYS BEFORE THE APPEAL HEARING, the
6 employer and the law enforcement officer shall exchange the names of all
7 witnesses who may be called to testify. A witness may be interviewed at the
8 discretion of the witness. The parties shall not interfere with any decision
9 of a witness regarding whether to be interviewed. AN EMPLOYER SHALL NOT
10 DISCIPLINE, RETALIATE AGAINST OR THREATEN TO RETALIATE AGAINST ANY WITNESS
11 FOR AGREEING TO BE INTERVIEWED OR FOR TESTIFYING OR PROVIDING EVIDENCE IN THE
12 APPEAL.

13 D. It is unlawful for a person to disseminate information that is
14 disclosed pursuant to subsection C to any person other than the parties to
15 the appeal and their lawful representatives for purposes of the appeal of the
16 disciplinary action. This subsection does not prohibit the use of the
17 information in the hearing or disclosure pursuant to title 39, chapter 1,
18 article 2.

19 E. The employer or the law enforcement officer may seek a
20 determination by the hearing officer, administrative law judge or appeals
21 board hearing the appeal regarding any evidence that the employer or the law
22 enforcement officer believes should not be disclosed pursuant to subsection C
23 because the risk of harm involved in disclosure outweighs any usefulness of
24 the disclosure in the hearing. In determining whether evidence will be
25 disclosed, the hearing officer, administrative law judge or appeals board may
26 perform an in camera review of the evidence and may disclose the material
27 subject to any restriction on the disclosure, including the closing of the
28 hearing or the sealing of the records, that the hearing officer,
29 administrative law judge or appeals board finds necessary under the
30 circumstances.

31 F. In any appeal of a disciplinary action by a law enforcement officer
32 in which a single hearing officer or administrative law judge has been
33 appointed to conduct the appeal hearing, the law enforcement officer or the
34 employer may request a change of hearing officer or administrative law
35 judge. In cases before the office of administrative hearings, on the first
36 request of a party, the request shall be granted. All other requests,
37 including any subsequent requests in cases before the office of
38 administrative hearings, may be granted only on a showing that a fair and
39 impartial hearing cannot be obtained due to the prejudice of the assigned
40 hearing officer or administrative law judge. The supervisor or supervising
41 body of the hearing officer or administrative law judge shall decide whether
42 a showing of prejudice has been made.

43 G. A party who violates subsection C or D, unless the violation is
44 harmless, shall not be permitted to use that evidence at the hearing, except
45 on a showing of good cause. The hearing officer or administrative law judge,

1 on a showing of good cause, may grant the opposing party a continuance,
2 otherwise limit the use of the evidence or make such other order as may be
3 appropriate.

4 H. IF THE EMPLOYER AMENDS, MODIFIES, REJECTS OR REVERSES THE DECISION
5 OF A HEARING OFFICER, ADMINISTRATIVE LAW JUDGE OR BOARD, THE EMPLOYER SHALL
6 STATE THE EMPLOYER'S REASONS FOR THE AMENDMENT, MODIFICATION, REJECTION OR
7 REVERSAL.

8 H. I. This section does not preempt agreements that supplant, revise
9 or otherwise alter the provisions of this section, including preexisting
10 agreements between the employer and the law enforcement officer or the law
11 enforcement officer's lawful representative association.

12 I. J. For the purposes of this section:

13 1. "Appeal" means a hearing before a state or local merit board, a
14 civil service board, an administrative law judge or a hearing officer.

15 2. "Disciplinary action" means the dismissal or demotion or the
16 suspension for more than forty hours of a law enforcement officer that is
17 authorized by statute, charter or ordinance and that is subject to a hearing
18 or other procedure by a local merit board, a civil service board, an
19 administrative law judge or a hearing officer.

20 3. "Investigative file" means the law enforcement agency's complete
21 report and any attachments detailing the incidents leading to the
22 disciplinary action.

23 4. "Law enforcement officer" means an individual, other than a
24 probationary employee, who is certified by the Arizona peace officer
25 standards and training board or who is a detention officer or correction
26 officer and who is employed by this state or a political subdivision of this
27 state other than a multi-county water conservation district.

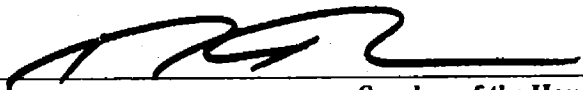
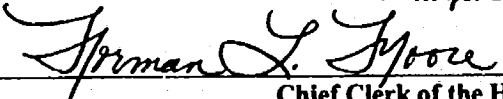
APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.

Passed the House April 12, 20 05,

by the following vote: 58 Ayes,

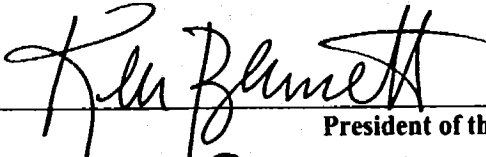

0 Nays, 2 Not Voting


Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate March 8, 20 05,

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting


President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

13th day of April, 20 05

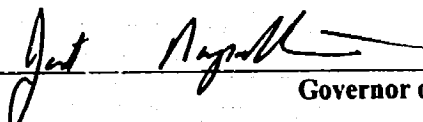
at 12:44 o'clock P. M.


Secretary to the Governor

Approved this 18 day of

April, 20 05,

at 2⁰⁵ o'clock P. M.


Governor of Arizona

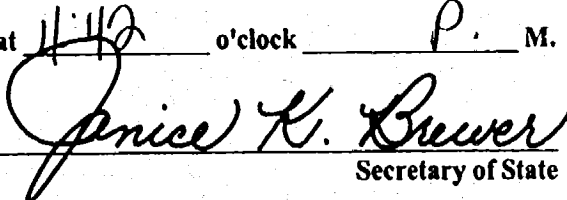
S.B. 1418

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 18 day of April, 20 05

at 11:42 o'clock P. M.


Secretary of State